object and scope, then the affirmation of the principle by the Council cannot be said to be unqualified. If, on the other hand, the sense of the Council is that those remarks refer only to incidental circumstances and details, which do not affect the main principle of the Bill, I also agree to such points being considered by the Council in discussing and amending the different sections.

President.—We should not lose sight of the fact that, in this legislation, we are only endeavouring to legalise a practice that has long existed in this State. This, in fact, is the main justification for the measure. Of late, some doubts have arisen on this question, and it is proposed to remove them by formally giving legislative sanction to the existing practice. I am not sure that in a matter of this kind, general principles as to the rights of parties and the remedies to be provided when they are infringed would be of much practical use. What we have to consider now is whether the Government should have power to recover by summary procedure public moneys and property due from its servants. There are, of course, other remedies open to Government, *viz.*, criminal prosecution of the public servant who has defrauded Government or committed mal-feasance or mis-feasance in respect of public moneys entrusted to him and the remedy by suing in a civil court. In addition to this, a summary procedure for recovering the amount due is also necessary. In this respect, we are only adopting the procedure which obtains elsewhere and which is in accordance with the long and well established usage here.

It must be remembered also that we are dealing with public servants who stand in a position of trust and confidence with the Government. They have undertaken certain responsibilities and are bound, by virtue of their being public servants, to discharge their duties faithfully. Without anticipating our further discussions to-day, I may observe that in the Breach of Contract Regulation Amendment Bill which we are about to take up for consideration, there is power given to commit to prison any artificer, workman or labourer who fails to fulfil his labour contract. There is no provision made for settling his claim or determining his liability. If a provision of this kind is thought necessary in the case of ordinary labourers who have simply contracted to render personal service, it will, I trust, be conceded that, in the case of public servants who have defrauded Government or have not discharged their trust faithfully, there is even a stronger reason and a more pressing necessity for Government to resort to summary procedure for the protection of public interests.

As regards the power to award imprisonment, I may say that the provision is there, simply as a deterrent. You are aware that similar provisions exist in the British Indian Acts. In my experience of the working of similar laws elsewhere, there has not been a single case during the last sixteen years in which this power had to be exercised. There was a good deal of discussion in connection with the Mysore Land Revenue Code whether this provision should be retained or not, and it was ultimately decided that there was no harm in retaining it and that it would serve as a deterrent and facilitate the prompt recovery of public revenue. I simply mention this for the information of the Council.

The Council having affirmed the principle of the Bill, Mr. Kesava Pillai proposed that it be referred to a Select Committee consisting of Messrs. Govinda Pillai, Rajaram Row, Ramier, Sesha Aiyar and the Mover, to report within one month.

Seconded by Mr. Nagam Aiya.

The motion was put and agreed to.

BREACH OF CONTRACT REGULATION AMENDMENT BILL.

Mr. Rajaram Row.—Sir, In asking the Council to take up for consideration the Report of the Select Committee on the Breach of Contract Amendment Bill, I beg to make a few observations. The draft Bill put into our hands has been returned to the Council with as few alterations as possible, as the original drafting was in itself clear, nor has the Select Committee found it necessary to interfere with the numbering or arrangement of the sections.

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As the present Bill replaces the old law on the subject entirely, we have thought it well to substitute the words "consolidate and amend" for the word "amend" in the preamble. This latter wording would have been enough, if the old law had been merely supplemented by the present Bill.

It will be noticed that section 3 of the original Bill stated that this Regulation would apply to cases of "criminal breaches of contract", but we have thought it well to qualify the last word "contract" by the term "lawful". The reason for this addition being clear and obvious, I need not enter into any explanation. To this section, a rider, by way of an Explanation, has been added. One of the conditions of the contracts, breaches of which can be dealt with under this law, is that the artificer, workman or labourer who binds himself for work to the employer should have received an advance of money. These advances might be either ready cash, or in some other shape, but doubts have arisen whether the latter would be recognised by the law. To give an illustration, suppose an artificer had received a ready cash advance and undertaken to carry out some work and that at the termination of the contract, he stood indebted to his employer and a fresh contract for some other work was entered into between them, or suppose for instance, that an artificer stood indebted on some other independent account to a man who was going to employ him, and that the parties agreed to regard the sum due by the artificer as the amount paid to him in advance, there is no reason why contracts entered into on such understanding should not be brought under this Regulation.

The next amendment is in section 4, and the object of this amendment has been clearly explained in para 6 of the Report. Although this is a criminal law, the transactions to which it relates and the relief it grants are of a quasi-civil nature, and whatever remedy is open to any employer should, after his death, also devolve on his representatives.

Our next amendment is in section 6. When a breach of contract becomes the subject of proceedings before a Magistrate, power is given to that officer, under section 5, to make an order either for the repayment of the money or for the performance of the work, and section 6 gives him the power to punish the defaulter criminally for disobedience of such order. The section as it stood in the original Bill presumed that the Magistrate would himself come to know that his order had not been obeyed and would inflict the punishment prescribed without any motion from any body. How he is to know that there has been a disobedience, is not clear from the section. We have, therefore, thought it well to lay down that the party interested should report to the Magistrate that the order made under section 5 has been disobeyed and apply for the infliction of criminal punishment on the defaulter; and we have also thought that there should be a limit of time within which such application should be made, as otherwise, a doom will be hanging over the head of a poor artificer for an indefinite period of time. This is the scope of the alteration made in this section. Again, in the concluding sentence or proviso to the same section, we have thought it well to make it clear that an order of a Magistrate for the repayment of the money should not deprive a remedy by civil suit when such order remains in force. The old wording left the matter dubious, as the pronoun "which" used in it might be construed to relate either to the order or the repayment of the money.

The last alteration is in section 8, which has been re-cast so as to bring within its scope the power of revision, as well as of appeal, as provided by the Code of Criminal Procedure.

These, Sir, are all the alterations made, and I move that the Bill in this shape be taken up for immediate consideration.

Seconded by Mr. Mahadeva Aiyar.

The motion was put and agreed to.

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Section 3.

Mr. Ramier.—I beg to propose that the word "criminal" before "breaches" in line 2 be omitted. This word does not occur in the British Act. What the Bill proposes to do is to treat breaches of certain contracts as criminal, and enforce them by penalties. The amendment is only verbal. If it is carried, the word may also be omitted from the heading and the preamble.

Seconded by Mr. Govinda Pillai.

Carried.

Mr. Rajaram Row.—I beg to propose that the words "resident or carrying on business in Travancore," in lines 6 and 7, be omitted. It has been suggested that the retention of these words would render it impossible for a company in London or Madras to enforce the provisions of the law, in respect of persons who may have entered into labour contracts with such company for doing work in Travancore. This, certainly, is not intended, and in order to remove any doubts on the point, I would expunge the words referred to in the amendment.

Seconded by Mr. Mahadeva Aiyar.

Carried.

Mr. Sesha Aiyar.—I beg to propose that the words "by any other artificers, workmen or labourers" be added after "performed," at the end of the section. The object of this amendment is only to render explicit what is evidently intended by the section.

Seconded by Mr. Ramier.

Carried.

Mr. Ramier.—I beg to propose that the words "within Travancore" be added at the end of the section as now amended. This, also, is intended to make the wording precise. The provisions of this law obviously relate to contracts for doing work in Travancore. It is best to make this clear.

Seconded by Mr. Mahadeva Aiyar.

Carried.

Mr. Sesha Aiyar.—I beg to propose that the Explanation to this section be omitted.

The Explanation, it will be observed, lays down that any amount due to a master or employer under a settlement of accounts should be considered an advance made to the labourer. It seems to me that this Explanation will have the effect of bringing under a penal statute a class of cases which, under all forms of civilised Government, will be treated as being of a purely civil nature. The principle of this Bill, so far as we can see from the enacting section, is that when an advance is made, the artificer, workman or labourer should be held liable to certain penalties. Every penal statute that we may introduce should, I need hardly say, interfere as little as possible with the liberties of the people. If the Explanation is retained, it would practically mean that when once a labourer enters into a contract, he would be bound by it for an indefinite period. It may be that three years have elapsed since the original advance was given, and in the ordinary course, even the civil remedy may be barred. It has been judicially pronounced, both here and in British India, that moneys due under a settlement of old accounts should not be treated as advances. It seems to me this is a wholesome decision, and any departure from it should be deprecated.

Mr. Vieyra.—I second the motion. From what my friend Mr. Sesha Aiyar said and in my own opinion, it will be a mistaken piece of legislation to declare that previous dealings, however far distant, may be treated as advances.

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After some discussion, the amendment was carried by majority.

Section 4.

Mr. Sesha Aiyar.—I beg to propose that the words "or their legal representatives" in lines 5 and 6, be omitted. The section, as now worded, gives power not only to the original employer but also to his legal representatives to move the Magistrate to enforce the penal provisions against the labourer. This is practically importing an incidence of civil law into a penal statute. There is no such provision in the British Act which is taken as our model. Contracts of personal labour are mostly of personal confidence, and I have not heard of a right to prosecute surviving in a legal representative.

Mr. Vieyra.—I second the motion, as I am strongly of opinion that the right to set the criminal law in motion against a labourer should not descend from the original employer to his legal representatives. It will, I am afraid, cause great hardship. There is no precedent for this novel provision in British India, and I entertain grave doubts whether we should at all make any departure in this respect.

Mr. Rajaram Row —It will be observed from the Report of the Select Committee that the words, which the amendment seeks to omit, were inserted by the Committee after much discussion. It is intended to safeguard the interests not only of the employer but of the labourer as well. With reference to Mr. Sesha Aiyar's observation about the right to prosecute surviving in legal representatives, I may observe that the contract itself continues, and as the violation of the contract is not in the lifetime of the deceased employer, it is not the right to prosecute that survives. The legal representative is in the position of a party to the contract, and when a violation takes place, the right to prosecute accrues in the first instance.

After some further discussion, the amendment was carried by majority.

Mr. Rajaram Row.—I beg to propose that the word "nearest" before "Magistrate" in line 8, be omitted. It is clear from the wording of the section that cases under this Regulation are to be tried by the second class Magistrate within whose local jurisdiction the contract was entered into or violated. The word 'nearest' is, therefore, out of place and may be omitted.

Seconded by Mr. Kesava Pillai.

Carried.

Section 5.

Mr. Sesha Aiyar.—I beg to propose that for the words "as may on a settlement of accounts be due to him," in clause (1) of this section, the words "as may be found by the Magistrate to be due to him" be substituted. It is desirable, in every way, that when a Magistrate orders the repayment of a portion of the advance, the actual amount to be repaid should be fixed by the Magistrate himself, instead of leaving it to the parties to settle accounts between themselves. The latter course will, doubtless, involve delay and give rise to further disputes.

Seconded by Mr. Mahadeva Aiyar.

Carried.

Mr. Sesha Aiyar —In clause (2) of the same section, I beg to propose that the words "within such time as may be fixed by the Magistrate" be inserted between "shall" and "perform" in line 1. The clause in question relates to the power of the Magistrate to order the accused workman or labourer to carry out the work according to the terms of his contract. It is necessary in such cases that a time should be fixed by the Magistrate, according to his discretion, within which the work should be executed. Otherwise, there would be an indefiniteness about the order, and consequent hardship to the labourer concerned.

Seconded by Mr. Rajaram Row.

Carried.

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Section 6.

Mr. Mahadeva Aiyar.—I beg to propose that the word "re-payment" be substituted for "payment" in line 9, and "paid" for 're-paid' in line 13 of this section. These are purely verbal amendments.

Seconded by Mr. Ramier.

Carried.

Section 7.

Mr. Sesha Aiyar.—I beg to propose that in line 5 of this section, the words "at the request of the complainant" be inserted between "accused" and "to." These words occur in the British Act and may, I think, be adopted with advantage.

Seconded by Mr. Mahadeva Aiyar.

Carried.

Mr. Rajaram Row.—I beg to propose that the Bill as amended be read again on a future day of which notice shall be given.

The motion was put and agreed to.

The Council adjourned at 6-50 P. M.

V. P. MADHAVA RAO,
President.

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